



# COMMONWEALTH of VIRGINIA

## *Motor Vehicle Dealer Board*

### **Guidance Memorandum to All Virginia Motor Vehicle Dealers January 11, 2012**

At its January 9, 2012 meeting, the Virginia Motor Vehicle Dealer Board determined that dealers paying fees to TrueCar based on TrueCar's current pricing model are in violation of Virginia Law and could face regulatory action including assessment of civil penalties and license suspension or revocation. The Board unanimously adopted the following resolution:

*Whereas the Board has reviewed and considered the pricing/fee model currently being utilized by motor vehicle dealers in the Commonwealth of Virginia with respect to payments to TrueCar. These payments are in violation of Virginia Code Section 46.2-1537, and the Board directs the MVDB Executive Director to notify motor vehicle dealers in the Commonwealth of Virginia of this decision, and begin enforcement action immediately.*

Virginia law prohibits dealers from compensating anyone in connection with the sale of a motor vehicle who is not either licensed as a motor vehicle dealer or a salesperson. Virginia Code Section 46.2-1537 states:

***Prohibited solicitation and compensation.***

*It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in § 46.2-1500 unless that person is licensed as required by this chapter.*

Dealers who pay unlicensed third party entities for leads must be careful to not run afoul of the above stated Virginia law. As set forth in the Internet Task Force Report, adopted by the Board in 2001:

“. . . licensed motor vehicle dealers may only compensate an unlicensed third-party vendor by a flat payment structure (e.g., per month) rather than per sale, per referral or any other transactional basis.” (See page 6 of the Report on the MVDB WEB Site: [www.mvdb.Virginia.gov](http://www.mvdb.Virginia.gov).)

The Board has consistently followed this policy in assessing compliance with the law. Thus, dealers may not pay an unlicensed third party entity on a per sale or per lead basis, including, but not limited to, any "flat fee" pricing/fee model variation where a "flat fee" is adjusted periodically based on the number of leads or sales generated or delivered. For example, if a dealer were to compensate an unlicensed third party that altered its "flat fee" to compensate for too few or too many leads delivered (or sales generated), the dealer would violate Virginia Code Section 46.2-1537.

Please be reminded that it is the motor vehicle dealer's responsibility to scrutinize its agreements with unlicensed third party entities, as it is the motor vehicle dealer that is held responsible for compliance with Virginia law.

At the January 9, 2012 Board Meeting, TrueCar indicated that it would reassess its dealer pricing/fee model utilized in Virginia in an attempt to come into compliance with Virginia law. Please note that the next opportunity for the Board to review formally an alternative pricing/fee model would be at the Board's next meeting scheduled for March 12, 2012.

As stated in the resolution, the pricing/fee model being utilized by TrueCar as of the Board Meeting January 9, 2012 was found to be in violation of Virginia law. Additionally, as stated in the resolution, enforcement action against motor vehicle dealers who are found using such pricing/fee model will begin immediately.

Finally, please note that, as discussed at the Board meeting, it is the general consensus of the Board that enforcement action will be based on usage of this pricing/fee model going forward -- i.e., from the date of this memorandum, and not based on actions prior to that date.